

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TALON NORCO, a minor, by RICKY)	
NORCO and WENDY NORCO,)	
Guardians <i>Ad Litem</i> , and RICKY)	Civil Action No. 2:11-cv-1453
NORCO and WENDY NORCO, in)	
their own right,)	Chief Judge Gary L. Lancaster
)	Chief Magistrate Judge Lisa Pupo
Plaintiffs,)	Lenihan
)	
v.)	ECF No. 5
)	
ALLSTATE INSURANCE CO., and)	
STEPHANIE CUNNINGHAM,)	
)	
Defendants.)	

MEMORANDUM ORDER

The Complaint in the above captioned case was filed in the Court of Common Pleas of Lawrence County, Pennsylvania on or about August 11, 2011. Subsequently, this action was removed to this Court by Defendants on November 14, 2011, and was referred to Chief United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation (ECF No. 15), filed on July 17, 2012, recommended that the Motion to Dismiss filed by Defendants Allstate Insurance Company and Stephanie Cunningham (ECF No. 5) be granted in part and denied in part. The report and recommendation recommended that the motion be granted as follows:

Coverage Claim in Count II – Recommend summary

judgment be granted.¹

Common Law Bad Faith Claim in Count III – Recommend granting motion to dismiss without prejudice. If Plaintiffs choose not to seek leave of court to amend their complaint to add allegations of harm as detailed in the above Report, then the Court recommends dismissal of this claim with prejudice.

Statutory Bad Faith Claim in Count IV – Recommend granting motion to dismiss with prejudice.

UTPCPL Claims in Counts V and IX – Recommend granting motion to dismiss with prejudice.

Wrongful Use of Civil Proceedings Claim in Count VI – Recommend granting motion to dismiss with prejudice as to Ricky Norco and Wendy Norco in their own right.

Fraud Claims in Counts VII and VIII – Recommend granting motion to dismiss with prejudice.

The report and recommendation further recommended that Defendants' motion to dismiss be **DENIED** as follows:

Wrongful Use of Civil Proceedings Claim in Count VI – Recommend denying motion to dismiss as to Talon and/or Guardian Plaintiffs on behalf of Talon.

¹ The magistrate judge treated the motion to dismiss as a motion for summary judgment with regard to Count II as both sides relied on non-public documents which were neither attached to,

Service was made on all counsel of record. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that they had fourteen (14) days to file any objections. Plaintiff filed Objections and Exceptions to the Report and Recommendation (ECF No. 16) on July 26, 2012,² and a Brief in Support of their Exceptions to the Report and Recommendation (ECF No. 22) on July 30, 2012, with regard to Counts III through IX. Defendants also filed Objections to the Report and Recommendation (ECF No. 18) on July 30, 2012,³ as to Counts III and VI. Plaintiffs filed a Reply to the Defendants' Objections to the Report and Recommendation (ECF No. 23) on August 14, 2012. Defendants filed a Response to Plaintiffs' Objections to the Report and Recommendation (ECF No. 24) on August 15, 2012.

After a *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and objections thereto, the following Order is entered:

AND NOW, this 10th day of Sept, 2012,

IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendants Allstate Insurance Company and Stephanie Cunningham (ECF No. 5) is **GRANTED IN PART** and **DENIED IN PART** as follows:

The motion to dismiss, treated as a motion for summary judgment as to the coverage claim in Count II of the Amended Complaint, is **GRANTED**. Judgment is

nor referred to in, the original or amended complaints.

² Plaintiffs also filed a Petition for Leave to Amend their Amended Complaint (ECF No. 17) on July 26, 2012. That motion will be ruled on separately by Judge Lenihan.

³ Also on July 30, 2012, Defendants filed a Response to Plaintiffs' Petition for Leave to Amend (ECF No. 19).

entered in favor of Defendants and against Plaintiffs as to Count II of the Amended Complaint.

The motion to dismiss the common law bad faith claim in Count III of the Amended Complaint is **GRANTED WITHOUT PREJUDICE**. Plaintiffs have sought leave of court to amend their amended complaint to add allegations of harm (ECF No. 17). The motion docketed at ECF No. 17 will be ruled on by Judge Lenihan in the first instance.

The motion to dismiss the statutory bad faith claim in Count IV of the Amended Complaint is **GRANTED WITH PREJUDICE**.

The motion to dismiss the Uniform Trade Practices and Consumer Protection Law claims in Counts V and IX of the Amended Complaint is **GRANTED WITH PREJUDICE**.


The motion to dismiss the wrongful use of civil proceedings claim in Count VI of the Amended Complaint is **GRANTED WITH PREJUDICE** as to Ricky and Wendy Norco in their own right, and **DENIED** as to Talon Norco and/or the Guardian Plaintiffs on behalf of Talon.

The motion to dismiss the fraud claims in Counts VII and VIII of the Amended Complaint is **GRANTED WITH PREJUDICE**.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 15) of Chief Magistrate Judge Lenihan, dated July 17, 2012, is adopted as the opinion of the Court.

IT IS FURTHER ORDERED that to the extent Plaintiffs are requesting that this Court find that this order involves a controlling question of law as to which there is

substantial ground for difference of opinion and that an immediate appeal from this order may materially advance the ultimate termination of the litigation, for purposes of filing an interlocutory appeal by permission under 28 U.S.C. §1292(b), said request is **DENIED.**


GARY L. LANCASTER
Chief United States District Judge

cc: All Counsel of Record
Via Electronic Mail